

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ELENA CELIA FORTANER, as Special )  
Administrator of the Estate of MARÍA DEL )  
CARMEN FORTANER NOU, Deceased; )  
)  
ALASAN PUYE, as Special Administrator )  
of the Estate of MUSTAPHA PAGANNA )  
PUYE CEESAY, Deceased; )  
)  
ALASAN PUYE, as Special Administrator )  
of the Estate of SIRA PUYE FORTANER, )  
Deceased; )  
)  
ENRIQUE CELIS BAUTISTA, as Special )  
Administrator of the Estate of RONALDO GOMEZ )  
SILVA, Deceased; )  
)  
ENRIQUE CELIS BAUTISTA, as Special )  
Administrator of the Estate of YANINA NAYADE )  
CELIS DIBOWSKY, Deceased; )  
)  
MARCOS ALEJANDRO CABALLERO )  
TACORONTE, as Special Administrator of the )  
Estate of DAVID CABALLERO TACORONTE, )  
Deceased; )  
)  
LUIS VALLEJO JUNCO, as Special Administrators )  
of the Estate of MARÍA DEL CARMEN VALLEJO )  
JUNCO, Deceased; )  
)  
MARIA CANDELARIA GIL PÉREZ, as )  
Special Administrator of the Estate of MARCOS )  
J. HERNÁNDEZ GIL, Deceased; )  
)  
MARÍA DEL CARMEN OJEDA PÉREZ, as )  
Special Administrator of the Estate of CLAUDIO )  
MANUEL OJEDA PÉREZ, Deceased; )  
)  
VICTOR RIVERO PÉREZ, as Special Administrator )  
of the Estate of RAYCO ALBERTO RIVERO )  
SUAREZ, Deceased; )  
)  
AQUILINA VEGA MARTEL, as Special )

Case No.

Circuit Court of Cook County  
Case No. 2009 L 009647

Administrator of the Estate of YAIZA MEDINA )  
 VEGA, Deceased; )  
 JOSE DOMÍNGUEZ PERDOMO, as Special )  
 Administrator of the Estate of ISABEL MINERVA )  
 DOMÍNGUEZ PÉREZ, Deceased; )  
 )  
 JOSÉ DOMÍNGUEZ PERDOMO, as Special )  
 Administrator of the Estate of CRISTIAN MARTIN )  
 DOMÍNGUEZ, Deceased; )  
 )  
 MARÍA CABRERA HERRERA, as Special )  
 Administrator of the Estate of ABENAUARA )  
 HERNÁNDEZ CABRERA, Deceased; )  
 )  
 MARÍA CABRERA HERRERA, as Special )  
 Administrator of the Estate of SIOMARA )  
 HERNÁNDEZ CABRERA, Deceased; )  
 )  
 MARÍA CABRERA HERRERA, as Special )  
 Administrator of the Estate of TANAUSU )  
 GONZÁLEZ HERNÁNDEZ, Deceased; )  
 )  
 ERIKA MARÍA REITZ SAAVEDRA, as )  
 Special Administrator of the Estate of ESTHER )  
 MARIA REITZ SAAVEDRA, Deceased; )  
 )  
 JORGE FERNÁNDEZ ROCAFULL, as Special )  
 Administrator of the Estate of JOSÉ FERNÁNDEZ )  
 VÁZQUEZ, Deceased, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 THE BOEING COMPANY, a corporation; )  
 MCDONNELL DOUGLAS CO., a corporation, )  
 SPANAIR S.A., a corporation, SAS GROUP, )  
 f/k/a SCANDINAVIAN AIRLINES SYSTEMS )  
 a corporation, KOREAN AIR, a corporation, )  
 LEACH INTERNATIONAL CORPORATION, )  
 a corporation, ESTERLINE TECHNOLOGIES )  
 CORPORATION, a corporation, ROHR, INC. )  
 d/b/a GOODRICH AEROSTRUCTURES GROUP, )  
 a corporation, ALENIA AERONAUTICA S.p.A., )  
 HAWKER SIDDLEY f/k/a HAWKER DE )  
 HAVILLAND, a corporation, and PRATT & )

WHITNEY, a corporation,  
Defendants.

## **NOTICE OF REMOVAL**

Defendants THE BOEING COMPANY (“BOEING”) and McDONNELL DOUGLAS COMPANY (“MDC”), by and through their attorneys, Bryan Cave LLP, file this Notice of Removal pursuant to 28 U.S.C. § 1369 and in accordance with 28 U.S.C. § 1441 and 28 U.S.C. § 1446. In support of their Notice of Removal, BOEING and MDC state as follows:

1. On or about August 14, 2009, Plaintiffs filed a Complaint at Law in the Circuit Court of Cook County, Illinois, *Fortaner, et al v. Boeing et al*, Case No. 2009L009647. A copy of the Complaint is attached as Exhibit "A."
2. Upon information and belief, Plaintiffs have not served a copy of the Summons and Complaint, by mail or otherwise, on any of the defendants listed in the Complaint and, to date, no proof of service has been filed in this action.
3. On September 17, 2009, the undersigned counsel confirmed in writing its agreement with Plaintiffs' counsel that BOEING and MDC would waive and accept service of the Complaint, without prejudice to any other defense that BOEING and MDC may have to the Complaint, and that service shall be deemed effected on that date.

### The Accident and Parties

4. The Complaint seeks damages for wrongful death of individuals traveling on Spanair Flight JK 5022, which crashed at Barajas Airport in Madrid, Spain on August 20, 2009, resulting in 154 fatalities.
5. Pursuant to Plaintiffs' Complaint:

- a. Plaintiff ALASAN PUYE is a resident of Sweden and a citizen of Gambia and was appointed to administer the estates of two decedents from the flight. (Complaint §§4, 5)
- b. All other plaintiffs are citizens and residents of Spain and are Special Administrators of the estates of the deceased passengers. (Complaint §§ 3, 6-20)
- c. Defendant Spanair is a corporation organized and existing under the law of Spain with its head office in Palma de Mallorca, Spain. (Complaint § 23)
- d. Defendant SAS Group is a corporation organized and existing under the laws of Sweden with its principal place of business in Stockholm, Sweden. (Complaint § 24)
- e. Defendant Korean Air is a corporation organized and existing under the laws of Korea with its principal place of business in Seoul, Korea. (Complaint § 25)
- f. Defendant Leach International Corporation is a corporation organized and existing under the laws of Delaware with its principal place of business in California. (Complaint § 26)
- g. Defendant Esterline Technologies Corporation is a corporation organized and existing under the laws of Delaware with its principal place of business in Washington. (Complaint § 27)
- h. Defendant Rohr is a corporation organized and existing under the laws of Delaware with its principal place of business in California. (Complaint § 28)
- i. Defendant Alenia Aeronautica is a corporation organized and existing under the laws of Italy with its principal place of business in Rome, Italy. (Complaint § 29)
- j. Defendant Hawker Siddley is a company organized and existing under the laws of the United Kingdom with its principal place of business in England. (Complaint § 30)
- k. Defendant Pratt & Whitney is a company organized and existing under the laws of Delaware with its principal place of business in Connecticut. (Complaint § 31)

6. Defendant BOEING is a Delaware corporation with corporate headquarters in Illinois.

7. Defendant MDC is a Maryland corporation with corporate headquarters in Illinois.

**The Multiparty, Multiforum Jurisdiction Act**

8. Section 1441(e)(1)(A) of 28 U.S.C., permits removal where “the action could have been brought in a United States district court under §1369 of this title.”

9. Section 1369(a) of 28 U.S.C., the Multiparty, Multiforum Jurisdiction Act (“MMJA”), vests federal courts with “original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 75 natural persons have died in the accident at a discrete location, if:

(1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place;

(2) any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or

(3) substantial parts of the accident took place in different States.”

10. Minimal diversity exists under MMJA where any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 28 U.S.C. §1603(a). 28 U.S.C. §1369(c)(1)(emphasis added). “A Corporation is deemed to be a citizen of any State...in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business.” 28 U.S.C. §1369(c)(2).

11. Minimal diversity between adverse parties exists in this action. It is clear from the allegations in Plaintiffs' Complaint that defendants BOEING, MDC, SAS Group, Korean Air, Leach International Corporation, Esterline Technologies, Rohr, Inc, Alenia Aeronatica and Pratt & Whitney are all citizens of a State distinct from every one of the adverse parties-the Plaintiffs who have filed the Complaint. See 28 U.S.C. §1369(c)(1).

12. In addition to involving minimal diversity, the Complaint involves a civil action that arises from a single accident involving the deaths of more than 75 persons at a discrete location: The accident at issue in Plaintiffs' Complaint occurred on August 20, 2008, at Barajas Airport located in Madrid, Spain and resulted in 154 deaths. (Complaint §1). Moreover, all but one defendant resides in a State distinct from the situs of the accident (see 28 U.S.C. §1369(c)(1)), and more than two defendants reside in different States. (see 28 U.S.C. §1369(a)(2)).

13. Accordingly, defendants BOEING and MDC are entitled to remove this action pursuant to 28 U.S.C. §§1389, 1441 (c)(1)(A).

14. This Notice of Removal has been filed timely with this Court within thirty (30) days after service was deemed effected on BOEING and MDC on September XX, 2009. 28 U.S.C. § 1446(b).

15. Written notice of the filing of this Notice of Removal has been duly sent to Plaintiffs' attorneys of record. A copy of the Notice of Removal was also duly sent to the Clerk of the Circuit Court of Cook County, Illinois for filing in Cause Number 09L9647. A copy of the Notice is attached as Exhibit "B."

WHEREFORE, on the basis of the foregoing facts, defendants, BOEING and MDC give Notice of Removal of this action and respectfully request that all further proceedings in the

Circuit Court of Cook County be stayed and that this Court assert jurisdiction over this suit.

Dated: September 17, 2009

Respectfully submitted,

By: /s/ Jennifer W. Russell  
Attorney for THE BOEING COMPANY and  
MCDONNELL DOUGLAS CORPORATION

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**CERTIFICATE OF SERVICE**

I here by certify that I have served a copy of the foregoing via U.S. Mail, postage prepaid on this 17<sup>th</sup> day of September, 2009 to:

Manuel von Ribbeck, Esq.  
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/s/ Jennifer W. Russell  
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MCDONNELL DOUGLAS CORPORATION